

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

JOEL McNEILL
Facility #57809
Kossuth County, Iowa

ADMINISTRATIVE ORDER
NO. 2010-AFO- 40

TO: Joel McNeill
2307 80th Avenue
Algona, Iowa 50511

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Eric Wiklund, Field Office 2
Department of Natural Resources
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to appeal rights:

Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Penalty of payment to:

Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Joel McNeill owns and operates a confined animal feeding operation with an animal unit capacity of 1,320 swine. The facility is located at 2308 80th Avenue; Algona, Iowa (Section 30, Union Township, Kossuth County).

2. On March 11, 2010, Mr. McNeill submitted the 2010 MMP update and compliance fee of \$198.00 for his facility to DNR Field Office 2. The check was returned by the bank and on March 26, 2010, DNR Budget and Finance sent Mr. McNeill a letter stating he must submit a payment of \$218.00 by certified check or money order by April 12, 2010. The payment included the compliance fee and a \$20.00 service fee from the DNR.

3. On March 31, 2010, DNR Field Office 2 sent Mr. McNeill a letter stating the MMP update was incomplete because of the returned check. The letter stated that Mr. McNeill must submit the check within ten days of the date of the letter to avoid a compliance action with a monetary penalty.

4. On May 18, 2010, DNR Field Office 2 sent Mr. McNeill a Notice of Referral stating that the MMP was incomplete and the check had not been submitted; therefore the matter was being referred for further enforcement.

5. Mr. McNeill has received a prior administrative order for failing to submit a complete MMP update. On September 30, 2005, DNR issued Administrative Order No. 2005-AFO-24 to Mr. McNeill for failing to submit a complete MMP update. The administrative order included an administrative penalty of \$2,500.00. Mr. McNeill had submitted the MMP update and compliance fee, but the compliance fee check was returned for insufficient funds. Mr. McNeill did not appeal the administrative order and failed to pay the administrative penalty and the compliance fee. On March 28, 2006, the administrative penalty and compliance fee was forwarded to the Department of Revenue and Finance to initiate a collections action against Mr. McNeill.

IV. CONCLUSIONS OF LAW

1. 567 IAC 65.16(3)"c" states that an annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany the annual MMP update submitted to the DNR for approval. Mr. McNeill's compliance fee is \$198.00. The compliance fee that Mr. McNeill submitted with his MMP update was returned to the DNR; therefore the compliance fee has not been submitted and the MMP update is considered incomplete. The above-mentioned facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders Mr. McNeill to do the following:

1. Pay the compliance fee of \$198.00 to DNR Field Office 2 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII; and
2. Pay a penalty of \$2,500.00 within 60 days of the receipt of this Order, subject to appeal rights stated in Section VII.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty of \$2,500.00 and stipulated penalties for violations of the compliance schedule of this administrative order.

Economic Benefit – Mr. McNeill's failure to timely submit the 2010 MMP compliance fee has allowed him to save time and money. He has gained an economic benefit from the delay in the submittal and payment of fees. \$100.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR uses the compliance fee to fund the animal feeding program. Failure to pay the compliance fee threatens the integrity of the program. Without payment of the compliance fees, the DNR would be unable to properly oversee the animal feeding program. Therefore, \$1,200.00 is assessed for this factor.

Culpability – Mr. McNeill has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. McNeill was issued a previous administrative order for the same violation

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as the one stated in this order. To date he has failed to pay the previous compliance fees and the penalty. Therefore, \$1,200.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 29 day of
July, 2010.

Facility #57809; Kelli Book, DNR Field Office 2, EPA, VIII.C.2